TEOH SOON KOK T/A TSK SUPPLIERS

v.

YANG DIPERTUA MAJLIS DAERAH KUALA MUDA

HIGH COURT MALAYA, ALOR SETAR
HISHAMUDIN YUNUS J
[CIVIL APPEAL NO: 12-33-96]
30 MAY 1998

LOCAL GOVERNMENT: *Obstruction - Removal of obstruction - Goods left on a road - Whether could be removed for obstruction of a public place - Whether road a public place - Detention of goods by local authority - Whether unlawful - Street, Drainage and Building Act 1974, ss. 46(1)(d), 46(3)(a), 48*

WORDS & PHRASES: *"public place" - Meaning of - Street, Drainage and Building Act 1974, s. 48*

Pursuant to an enforcement operation to remove obstructions from the streets, the local authority for Sungai Petani ('the respondent') had seized and detained certain machinery which the appellant had deposited on a road. The appellant's action under the tort of conversion against the respondent for the return of the machinery was dismissed by the Sessions Court judge and this was its appeal.

Held:

[1] The Sessions Court judge was correct in her finding of law that the said road was a public road and hence a "public place". Under s. 48 of the Street, Drainage and Building Act 1974 ('the Act'), a "public place" includes "any place to which the public has access".

[2] Section 46(3)(a) of the Act not only confers a power but imposes a duty on the respondent to remove obstructions from the streets.

[3] The appellant had clearly contravened s. 46(1)(d) of the Act by depositing the machinery which was used in connection with its trade on the said road. The fact that the said road was not a through-road but lead to a dead-end was irrelevant.

[Appeal dismissed.]

For the appellant - En Shanmugaiah; M/s C Shanmugaiah & Co
For the respondent - Mohd Sarisfuddin; M/s Ahmad Rashid & Co

Legislation referred to:
Street, Drainage and Building Act 1974, ss. 46(1)(c), (d), (3)(a), (d), 48

Reported by Alex KC Lee

JUDGMENT

Hishamudin Yunus J:

On 22 May 1991 the Majlis Daerah Kuala Muda (the respondent/defendant), the local authority responsible for the administration of the town of Sungai Petani), carried out an enforcement operation to clear the roads and streets of the industrial area of Bakar Arang in Sungai Petani of obstructions. In the course of the operation, they seized and detained certain machinery and parts of machinery ("the property" or "the goods") belonging to the plaintiff which had been deposited on a road for about two weeks.

This is an appeal against the decision of the learned Session Court judge who had dismissed the appellant's/plaintiff's claim against the respondent/defendant ("the council"), for the unlawful detention of those property. The appellant had claimed for the return of those goods. The present suit is an action for the tort of conversion.

I had dismissed the appeal.

I find that the learned Sessions Court judge was correct in her finding of fact that the property were placed on a road and causing obstruction to the public. I agree with her finding of law that the road was a "public place". Section 48 of the Street, Drainage and Building Act 1974 (Act 133) ("the Act") defines "public place" as –

> "public place" means any street, park, garden, promenade, fountain, traffic island or circus, playground, river bank, whether above or below high water mark, place of a public resort or **any place to which the public has access**. [emphasis added]

There is evidence that the road is a public road.

I also agree with her view that the defendant, as a local authority, was charged with the duty of removing those goods. For s. 46(3) of the Act provides:

> 46. (3)(a) The local authority may cause any such obstruction to be removed or may itself through its servants remove the same to a suitable place, there to remain at the risk of the owner or person offending and may detain the same until the expenses of removal and detention are paid.

I use the word "duty" here because although the words "may cause" are used in s. 46(3)(a), in my view, this provision of the Act, imposes a duty on the council rather then conferring on it a power.

At the time of their removal by the authority, the property were already there on the road for about two weeks.

After the seizure, the property were kept in the compound of the workshop of the council. The plaintiff never claimed them.

In my opinion, the act of the plaintiff in depositing their property on the road was clearly in contravention of s. 46(1)(d) of the Act. This provision states:

> 46. Obstruction.
>
> (1) Any person who:
>
> ...
>
> (d) deposits or causes to be deposited any goods, article or thing **used for or in connection with his trade** in any public place;
>
> Shall be guilty of causing an obstruction ... [emphasis added]

I hold that there had been a contravention of the above provision because the plaintiff's first witness, PW1 (the owner of the factory), had said in evidence that the property that were deposited on the road were used in connection with his trade and were intended to be kept there only temporarily until such time when they would be taken to the factory (which was adjacent to the road) to be assembled.

The learned Sessions Court judge was of the opinion that there was obstruction of a public place by virtue of s. 46(1)(c). This provision reads:

> 46. (1) any person who -
>
> ....
>
> (c) deposits or cause to be deposited any box, bale or package or merchandise, utensils, crockery, or other articles or thing in any public place for a longer time than is necessary for loading or unloading such merchandise or article;
>
> shall be guilty of causing an obstruction ...

The learned counsel for the appellant, however, argued that the above para. (c) of sub-s. (1) does not apply because there was no evidence to show that the property were meant to be loaded or unloaded to or from a vehicle. I agree with learned counsel. But I must add that as the act of the plaintiff was caught by the provision of s. 46(1)(d), all the same, the authority has the duty to remove those goods.

The learned counsel for the appellant had argued that there was no obstruction to road users since the road in question was not a through road but lead to a dead end. The evidence of both sides in the present case was not clear as to on which part of the road were the goods deposited. It was merely said in evidence that the items were found deposited on the road. However, even assuming that they were deposited at the dead end part of the road, still, to my mind, that tantamount to obstructing the usage of the road. Members of the public are entitled to the maximum utilisation of the road.

It is further alleged by the defendant that the property, after the seizure, were not taken to a "suitable place" as required by s. 46(3)(b). The Act does not define what is meant by "suitable place". According to one of the officers of the council (an administrative assistant with the council – DW1) who testified, it was in keeping with the practice of the council for goods detained to be kept at the workshop of the local authority ("bengkel majlis"). It was, however, contended by the learned counsel for the plaintiff that the workshop was not a suitable place because the property were simply left in the compound of the workshop without being looked after. But there is no clear evidence describing the manner in which the items seized were kept. Be that as it may, in my opinion, whether or not the workshop is a suitable place should not be raised as an issue because, on the pleading, the plaintiff is not suing the defendant for negligence in connection with the custody of the machinery and the related items. Moreover, even assuming that it could be shown that the workshop was not a suitable place for the storage of the property, such a fact could not be used against the defendant to deprive it from carrying out its duty of keeping public roads clear of obstructions.